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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,294	03/27/2002	Dieter Feucht	Mo7029/LeA34,026	9361
34469	7590	01/14/2004	EXAMINER CLARDY, S	
BAYER CROPSCIENCE LP Patent Department 100 BAYER ROAD PITTSBURGH, PA 15205-9741			ART UNIT 1616	PAPER NUMBER

DATE MAILED: 01/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/089,294

Applicant(s)

FEUCHT ET AL.

Examiner

S. Mark Clardy

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 17 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-16 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 20030203.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Art Unit: 1616

Claims 1-16 are pending in this application.

In the response filed October 17, 2003, applicants elected the species of the composition comprising:

1. 2-(4-thiocarbamoyl-2-fluoro-5-ethylsulfonylaminophenyl)-4-methyl-5-trifluoromethyl-2,4,-dihydro-3H-1,2,4-triazol-3-one
2. iodosulfuron.

Claim 9 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim may not depend from another multiply dependent claim (i.e., claim 8). See MPEP § 608.01(n). Accordingly, the claim has not been further treated on the merits.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8 and 10-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Dollinger et al (DE 198 02 697; equivalent to US 6,297,192), Theodoridis (US 5,294,595), Heistracher et al (US 5,885,934), and Hoshi (US 6,211,118).

Dollinger et al teach the combination of: I) applicants' triazolinone herbicide (p. 5, lines 56-60), in combination with II) a phenylsulfonylurea herbicide, which is more specifically described as a phenylsulfonylaminocarbonyltriazolinone compound.

Theodoridis teaches that the triazolinone herbicides are useful in combination with a variety of secondary herbicides (column 26).

Art Unit: 1616

Heistracher et al also teach the utility of combining secondary herbicides such as sulfonylureas with triazolinone herbicides in order to broaden the spectrum of activity and to achieve synergistic effects (col 41, lines 20-35).

Hoshi teaches that iodosulfuron was a known sulfonylurea herbicide (col 2, lines 24-27) which was known to be useful in combination with other herbicides.

One of ordinary skill in the art would be motivated to combine these references because they disclose known herbicides in combination with additional herbicidal agents.

Thus it would have been *prima facie* obvious to the ordinary artisan at the time the invention was made to have combined the elected triazolinone and sulfonylurea herbicides in a single composition because each component was known in the prior art, and because the combination with additional herbicidal agents in order to achieve an enhanced spectrum of activity and/or synergistic results was known.

No unexpected or unobvious results are noted; no claim is allowed.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out

Art Unit: 1616

the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Mark Clardy whose telephone number is 703-308-4550. The examiner can normally be reached on 7:20 - 3:50.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

A handwritten signature in black ink, appearing to read "S. Mark Clardy". The signature is fluid and cursive, with the first name "S." being small and the last name "Clardy" being larger and more prominent.

S. Mark Clardy  
Primary Examiner  
Art Unit 1616

January 12, 2004